



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard Program.

Rulemaking 04-04-026
(April 22, 2004)

**RESPONSE OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
TO PETITION OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND
GREEN POWER INSTITUTE FOR MODIFICATION OF DECISION 05-12-042**

July 17, 2007

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits this Response to the Petition of the California Wind Energy Association (CalWEA) and the Green Power Institute (GPI) for Modification of Decision (D.) 05-12-042 (2005 Market Price Referent (MPR) Methodology) (“CalWEA/GPI Petition”). The CalWEA/GPI Petition was filed in this proceeding on June 25, 2007, along with a motion by these same parties to shorten time for responses and to expedite a decision on the petition. This Response is timely filed and served pursuant to Rules 1.9, 1.10, and 16.4(f) of the Commission’s Rules of Practice and Procedure and the Administrative Law Judge’s (ALJ’s) Rulings of June 25 and June 28, 2007, shortening the time to respond to the CalWEA/GPI Petition to July 17, 2007.¹

THE CALWEA/GPI PETITION, COUPLED WITH RECENT COMMISSION ACTION, UNDERSCORE THE NEED FOR IMMEDIATE RECONSIDERATION AND REFORM OF THE RPS MPR METHODOLOGY.

A. Introduction

The CalWEA/GPI Petition requests modification of D.05-12-042 to include a greenhouse gas (GHG) adder in the 2007 and successive Market Price Referents (MPRs) applied to eligible renewable resource electric generation procured pursuant to the Renewable Portfolio Standard

¹On June 27, 2007, ALJ Simon circulated a ruling by electronic mail to all parties to R.04-04-026 which set July 17 and July 24, 2007, as the respective due dates for responses and reply to the CalWEA/GPI Petition. A formal ruling adopting this schedule was issued on June 28, 2007, including instructions to serve all documents on the service lists in both R.04-04-026 and R.06-02-012 (current RPS design docket).

(RPS) Program. Although CEERT sees merit in this request, the CalWEA/GPI Petition, coupled with recent Commission actions related to the MPR, also underscore an immediate need for the Commission to clarify, if not, reconsider how the MPR is calculated and applied for purposes of the RPS Program.

Specifically, to the extent that the Commission grants the CalWEA/GPI Petition, CEERT asks that, in doing so, the Commission makes very clear that the inclusion of a GHG cost adder to the MPR methodology is only an *interim* step to a full reconsideration of this methodology based on apparent change in its use at the Commission and other facts alleged in the CalWEA/GPI Petition. In particular, CEERT asks that the Commission confirm that, even with such an adder, the MPR does not represent a *price cap* or a *reasonableness price benchmark* for renewables generation. If the Commission does not take this action, but instead indicates an intent to alter the role of the MPR, which is limited by statute to a cost allocation scheme, and, instead, apply it *as either a price cap or reasonableness price benchmark for renewable generation*, the Commission must in turn commit to developing a methodology to be used for those purposes that incorporates the full value of all attributes of renewable generation.

B. For the RPS Program, the Commission Must Adhere to the Statutorily Prescribed Purpose of the MPR.

In D.05-12-042, the Commission appeared to appreciate that, while the “market price referent” (MPR) adopted as part of the RPS Program statute² had multiple “functions,” it only had one purpose: to determine how payment responsibility would be allocated for RPS-eligible procurement.³ Specifically, for RPS-eligible projects bid at or below the MPR, those costs would be paid by ratepayers through their energy charges; for bid prices above the MPR, those costs could be covered by an award of “supplemental energy payments” (SEPs) that are funded

² PU Code §399.11, et seq.

³ D.05-12-042, at pp. 4-7.

through ratepayer public goods charge (PGC) funds. Thus, the MPR serves as a price obligation allocation point between two sources of ratepayer funding – energy charges and public goods charges, but it is *not, nor was it ever intended to serve*, as a price cap on renewables procurement.⁴

In fact, as the Commission recognized in D.05-12-042, the MPR actually bears no relation to renewable generation costs or values: “The proxy plant, as we have repeatedly noted, does *not* represent a specific type of renewable generation technology; rather the MPR is to represent the presumptive cost of electricity from a *non-renewable* energy source.”⁵ Further, in the context of the RPS Program, the *value* of renewable generation attributes are only recognized and compensated through an award of supplemental energy payments (SEPs).

Despite this apparent confirmation of the limits of the MPR in D.05-12-042, the Commission in recent actions appears to be moving toward a position in which the MPR, calculated for application to RPS procurement, has suddenly become disconnected from its central purpose as a price obligation allocation point and, instead, is quickly becoming “the presumptive cost” limit on what ratepayers can or should pay for renewable generation. This “change” has been evidenced in: (1) an ALJ’s Ruling issued in R.06-02-012 on May 10, 2007, which included for comment an Attachment A written by Energy Division staff regarding a proposed “short term” MPR methodology, and (2) a Proposed Decision issued in R.06-05-027 on June 26, 2007, in which certain tariffs and standard contracts are adopted for renewables procurement from public water and wastewater agencies pursuant to Assembly Bill (AB) 1969 and from other customers, based on a limited expansion of that program.

⁴ PU Code §399.15 (in full).

⁵ D.05-12-042, at p. 29; emphasis original.

Unfortunately, both Attachment A to the May 10 ALJ’s Ruling and the Proposed Decision contain analysis and conclusions about the MPR that are at odds with its statutory purpose and appear to expand its use to now serve as a price cap on renewables generation procurement. In this regard, the Proposed Decision bases the AB 1969 “tariff rate” at the current MPR, even though the investor-owned utility (IOU) buying this renewable generation is to receive the full value of that power, including its “green” or “environmental” attributes.⁶ Without citation and with no consideration of the interaction between the MPR and SEPs, the Proposed Decision simply excludes SEPs from the AB 1969 Program and tariffs.⁷ The Proposed Decision nevertheless concludes that the MPR tariff rate will give the “the right price signal for future investment” in renewables.”⁸

In the case of Attachment A of the May 10 ALJ’s Ruling, the interrelation between the MPR and SEPs is also ignored. Instead, the MPR is adopted as a price ceiling on or, at the least, a reasonableness pricing benchmark for, for “short-term” renewable generation procurement.

In its comments on both the Proposed Decision and Attachment A, CEERT made the following central observation: The purpose of the MPR in the RPS Program, as intended by PU Code §399.15, is limited to serving as an allocation point between the portion of a winning renewable bid price to be charged ratepayers in their energy rates and the amount that is to be covered, if necessary, by supplemental energy payments (SEPs). By statute, the MPR is *not* a reasonableness pricing benchmark for renewables generation, it is *not* a cap on the total payment that can be made for RPS renewables procurement, and it certainly is not the “right price signal”

⁶ Proposed Decision, at pp. 27-37.

⁷ Proposed Decision, at pp. 27-28.

⁸ Proposed Decision, at p. 36.

for incentivizing new renewable generation investment.⁹ This is simply not its statutory purpose or the law.

The consequences of “missing” the critical, limiting purpose of the MPR, were noted in the comments of many parties on Attachment A to the May 10 ALJ’s Ruling and were best summarized by the Green Power Institute (GPI) as follows:

“The sole statutory purpose of [the Commission] determining the market price referent (MPR), which is intended to be an indication of the ‘market price of energy,’ is to allocate the costs of a long-term RPS project between the purchasing LSE [load-serving entity] and the supplement energy payment (SEP) program run by the CEC [California Energy Commission]. Renewables costs up to and including the Commission-determined MPR are to be paid by the IOU, and above-MPR costs are to be paid by SEPs....The important point here is that the purpose of the MPR is not to determine the maximum amount that can reasonably be paid for renewable energy. On the contrary, the MPR is determined in expectation of the fact that it is reasonable for electricity consumers to pay more than the MPR for renewable electricity (MPR + SEP). The MPR simply allocates the cost between the customer’s regular energy charge, and the portion of the customer’s public goods charge that funds the SEP program.”¹⁰

To the extent that the MPR is to have an expanded purpose, as seemingly intended by in the recent Commission actions noted above, and SEP funding is to be ignored, CEERT believes that the GHG adder proposed by CalWEA and GPI in their petition is an appropriate, but only a *first and interim*, step to complete reformation of the MPR. As discussed below, the Commission should instead be focusing on the development of a methodology that is in fact based on, and appropriately values, renewable generation.

C. If the Commission Intends to Set Price Caps on or Reasonableness Pricing Benchmarks for Renewables Generation, It Must Develop and Adopt a Methodology that Incorporates the Full Value of Renewable Generation.

For the MPR to actually serve as a “reasonableness pricing benchmark” or a price ceiling on renewables procurement, the Commission’s job, as recognized by statute, could not end in

⁹ R06-02-012 CEERT Reply Comments (June 25, 2007), at pp. 1-2; R06-05-027 CEERT Comments on ALJ Mattson Proposed Decision, at pp. 1-6. See also, PU Code §§ 399.15(a) and (d).

¹⁰ GPI Comments on May 10 Ruling, at p. 2.

simply establishing the MPR alone. In fact, as GPI, San Diego Gas and Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) have pointed out, any “reasonableness pricing benchmark” for *renewables* must be the *sum of two* calculations: “the cost of brown energy” *and* a “premium for the renewable attribute.”¹¹ GPI has correctly stated:

“The state has determined that the uncompensated benefits of renewables, in the areas of environmental quality, public health, energy diversity and security, and the promotion of rural economic development opportunities, are sufficient to compel it to create the RPS program as a statewide public policy. The only way that these two intrinsic factors can be squared, that is that renewable cost more on average than the market price of electricity, and their uncompensated benefits justify public-policy measures on their behalf, is if the reasonableness limit on the price for renewables is substantially higher than the MPR.”¹²

In fact, as CEERT commented in responding to Attachment A, only a “green power benchmark,” to the extent it includes values for all of the environmental externalities and attributes of renewable power, can ever serve as either a price ceiling or reasonableness pricing benchmark for renewables or RPS procurement. Until such a “green power benchmark” is developed, the Commission must ensure that it does not seek to inappropriately extend the definition or application of the MPR to represent such a benchmark, when it clearly does not either in law or fact.

As to a GHG adder being incorporated into the MPR as it is presently calculated, D.05-12-042 rejected an earlier request for such a change, agreeing with PG&E that such an adder “is not an out-of-pocket expense incurred by the conventional fired generator” and concluding on its own that “greenhouse gas policy in California is still being developed.”¹³ Further, the Commission stated its agreement with Southern California Edison Company (SCE) that “including a [GHG] adder, thus increasing the MPR, solely as a way to preserve the pool of

¹¹ PG&E Comments on May 10 Ruling, at p. 2.

¹² GPI Comments on May 10 Ruling, at pp. 7-8.

¹³ D.05-12-042, at p. 47.

money available for SEPs (by reducing the number of contracts with prices above the MPR) is neither a legitimate purpose nor an allowable method for the MPR.”¹⁴

Unfortunately, such a posture, for the many reasons cited in the CalWEA/GPI Petition, and given the Commission’s current attempt to apply the MPR as a price cap on renewables procurement, just does not make sense today. To begin with, GHG emissions reduction in the electric generation sector is no longer just a “policy,” but a statutory mandate (Assembly Bill (AB) 32), and the “reality” of this adder for gas-fired generation has now been recognized by the Commission itself in avoided cost methodologies adopted for multiple ratemaking purposes, as the CalWEA/GPI Petition demonstrates.¹⁵

Perhaps most troubling is the Commission’s footnoted remark in D.05-12-042 that somehow the availability of SEPs funding is wholly unrelated to the calculation or application of the MPR. It is not, for the many reasons cited above. When SEPs run out, so does the RPS Program mandate, as CalWEA and GPI appropriately note in their petition.¹⁶ Ignoring this effect is simply ignoring this state’s mandate to increase renewables generation as a primary means for meeting California’s multiple resource, environmental, and, now, GHG emission reduction goals.

Rather than simply wait for that circumstance to become an inevitability, CEERT asks that Commission to turn immediately to developing a “green power benchmark.” Such a benchmark could apply to all renewables procurement, to the extent it properly values and includes all of the environmental externalities and attributes of renewable power. Development

¹⁴ D.05-12-042, at p. 48.

¹⁵ CalWEA/GPI Petition, at pp. 3-7.

¹⁶ CalWEA/GPI Petition, at p. 8.

of such a “green power benchmark” is actually long overdue¹⁷ and would not only be consistent with current law, but also pending legislative recommendations to alter the SEP Program.¹⁸ While “proxies” – from SEP payments to the price of a renewable energy credit (REC) in trading market – may exist as a referent for that value, data available today certainly is sufficient to develop such a benchmark that alone could be used to assess the price reasonableness of renewables generation and procurement.¹⁹

CONCLUSION

CEERT urges the Commission to use the incentive provided by the CalWEA/GPI Petition to fully reconsider the MPR methodology used for RPS procurement and move forward quickly to begin the process of developing a green power benchmark in its place. To the extent that the CalWEA/GPI Petition is granted, CEERT asks that the Commission makes clear that inclusion of a GHG adder in the MPR is only an interim and first step to full reconsideration of the methodology appropriate to determining the reasonableness of prices paid for renewable generation.

Respectfully submitted,

July 17, 2007

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¹⁷ The legislative intent for the Commission to “complet[e] an electric generation procurement methodology that values the environmental and diversity costs and benefits associated with various generation technologies” has not changed in more than 15 years. (PU Code §701.3 (added by Stats. 1991, Ch. 1023)).

¹⁸ See, e.g., Senate Bill (SB) 1036.

¹⁹ R06-02-012, CEERT Reply Comments, at pp. 5-6.

CERTIFICATE OF SERVICE

I, Sara Steck Myers, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 122 - 28th Avenue, San Francisco, California 94121.

On July 17, 2007, I served the within document **RESPONSE OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES TO PETITION OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND GREEN POWER INSTITUTE FOR MODIFICATION OF DECISION 05-12-042**, in R.04-04-026, in the manner required by Rules 1.9 and 1.10 of the Commission's Rules of Practice and Procedure, with paper copies provided pursuant to Rule 1.10(d), and with service on the service lists in both R.04-04-026 and R.06-02-012, at San Francisco, California.

Executed on July 17, 2007, at San Francisco, California.

/s/ **SARA STECK MYERS**

Sara Steck Myers

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R.04-04-026 and R06-02-012
July 17, 2007

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